

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In re:)

Clarksburg Casket Company)

Docket No. EPCRA-III-165)

) EPCRA Appeal No. 97-3
)
)
)

ORDER DISMISSING APPEAL

On July 1, 1997, respondent Clarksburg Casket Company ("Clarksburg") filed with this Board a notice of appeal and appellate brief, attempting to challenge the presiding officer's June 6, 1997 Order Granting Motion for Accelerated Decision ("Accelerated Decision"). Clarksburg claims that its appeal is filed pursuant to 40 C.F.R. § 22.30(a)(1).¹ Notice of Appeal at 1. However, an appeal of an accelerated decision may be filed at this time pursuant to section 22.30(a)(1) only if it resolves "all the issues and claims in the proceeding." 40 C.F.R. §§ 22.20(b) & 22.29(a).² The Board concludes from the record

¹Hereafter, all regulatory references in the text are to title 40 of the Code of Federal Regulations, and shall be referenced by the shorthand notation "section [number]."

²Subpart (b)(1) of section 22.20 provides that an accelerated decision which resolves "all the issues and claims in the proceeding, * * * constitutes an initial decision." Subpart (b)(2) provides that where an accelerated decision resolves less than all issues or claims in the proceeding, the presiding officer, shall among, other things, "issue an interlocutory order * * *." Section 22.29(a) states, in relevant part, that only default orders, initial decisions rendered after an evidentiary hearing, and decisions to dismiss or accelerated decisions issued

(continued...)

received on appeal that the Accelerated Decision does not resolve all of the issues or claims in the underlying administrative proceeding. Accordingly, the Board hereby dismisses Clarksburg's appeal.

As this Board explained in its recent order dismissing the appeal in *In re Oklahoma Metal Processing Company, Inc. d/b/a Houston Metal Processing Company et. al*, TSCA Appeal No. 97-5 (June 11, 1997) ("Order"), an accelerated decision in which the presiding officer decides liability issues without addressing the amount of any penalty to be assessed is not an initial decision of the kind described in section 22.20(b)(1), and therefore is not immediately appealable to this Board pursuant to section 22.30. Such a decision is an interlocutory ruling of the kind described in section 22.20(b)(2), resolving "less than all issues or claims in the proceeding."

Here, the Accelerated Decision orders entry of judgment in favor of Region III "on this issue of liability, only, * * *." Accelerated Decision at 19. Further, although a civil penalty of \$102,000 was proposed by the Region in the administrative complaint (*id.* at 17), the Accelerated Decision contains no penalty assessment or determination that a penalty is not appropriate. Since the Accelerated Decision clearly does not

²(...continued)
under section 22.20(b)(1) are appealable to the Board as a matter of right. Other orders or rulings may be appealed only pursuant to the procedures more fully described in section 22.29.

resolve "all the issues and claims in the proceeding," it is interlocutory. Order at 2.

To pursue an immediate appeal, Clarksburg was required to proceed under section 22.29, by requesting the presiding officer to certify her order to the Board for interlocutory review. From the record on appeal it appears that Clarksburg has made no attempt to obtain such certification.³ Consequently, Clarksburg cannot obtain review of the presiding officer's liability determination until after an initial decision is issued.

Because there is no appealable order before the Board, EPCRA Appeal No. 97-3 is dismissed. Once an initial decision is issued, Clarksburg may appeal the presiding officer's liability ruling in the manner contemplated by section 22.30(a).

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: July 3, 1997

By: Kathie A. Stein
Environmental Appeals Judge

³Although the entire record is not before us, we have found nothing in Clarksburg's notice of appeal or appellate brief to suggest that Clarksburg requested certification of the presiding officer's Accelerated Decision, as required under section 22.29(a).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Dismissing Appeal in the matter of Clarksburg Casket Company, EPCRA Appeal No. 97-3, were sent to the following persons in the manner indicated:

By Facsimile and by
Certified Mail,
Return Receipt Requested:

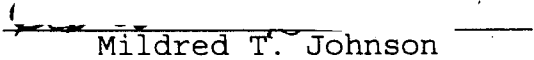
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Dated: July 3, 1997


Mildred T. Johnson
Secretary